

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

January 24, 2007

ACO-57

No. 06-3285

Michael Stollenwerk

v.

Jeffrey B. Miller, in his official capacity as the Commissioner for
the Pennsylvania State Police and in his individual capacity; John K. Thierwechter, Major,
in his official and individual capacity; Lancaster County Sheriff's Office; Terry A. Bergman,
in his official and individual capacity

Jeffrey B. Miller; John K. Thierwechter,
Appellants
(E.D. of PA Civil No. 04-cv-05510)

Present: SLOVITER AND CHAGARES, Circuit Judges

Uncontested Motion by Appellant's for Partial Remand to the District Court
to consider entering a further order in accordance with the agreement of the parties.

/s/ Carmen M. Hernandez

Carmen M. Hernandez

Case Manager 267-299-4952

ORDER

The foregoing motion is granted.

FILED

JAN 29 2007

MICHAEL E. KUNZ, Clerk
By [Signature] Dep. Clerk

By the Court,

/s/ Dolores K. Sloviter

Circuit Judge

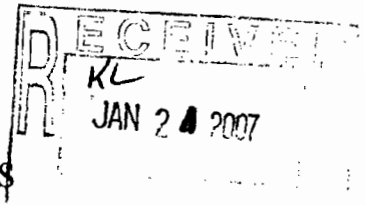


Marcia M. Waldron

Marcia M. Waldron, Clerk

Dated: January 29, 2007

CMH/cc: CMT, JDY



IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

MICHAEL STOLLENWERK, : CIVIL ACTION
Appellee :
v. :
JEFFREY B. MILLER, et al., :
Appellants : No. 06-3285

**COMMONWEALTH APPELLANTS' UNCONTESTED MOTION FOR
PARTIAL REMAND**

Appellants Jeffrey B. Miller and John K. Thierwechter ("Commonwealth appellants"), by their attorney, Claudia M. Tesoro, Sr. Deputy Attorney General, respectfully move for a partial remand of this appeal. In support of this motion, which is uncontested, the Commonwealth appellants state:

1. The Commonwealth appellants filed this appeal from the district court order entered June 6, 2006, denying their second motion to alter or amend the judgment against them in this Privacy Act case.
2. The Commonwealth appellants' appeal did not question the substance of the district court's February 27, 2006 ruling on the merits of plaintiff Stollenwerk's Privacy Act claim; nor did the appeal question the court's June 6, 2006 award of

attorney's fees to plaintiff Stollenwerk. Rather, by their appeal the Commonwealth appellants sought to challenge the district court's refusal to modify its order denying their first motion to alter or amend, insofar as that order (dated May 3, 2006) had not only reaffirmed but also apparently broadened the relief originally afforded by the district court in its February 27, 2006 Memorandum and Order. The problem that the Commonwealth appellants perceived was that the May 3, 2006 order amounted to an injunction requiring them to take certain action with respect to *all* firearm permit "applicants," not only plaintiff Stollenwerk.

3. In accordance with this court's Appellate Mediation Program, this appeal was assigned for mediation.

4. After a telephone mediation session, various follow-up conversations, and extensive negotiations by the parties, the Commonwealth appellants and appellee Stollenwerk have agreed to certain revised language to be substituted for the passage in the district court's May 3, 2006 order that gave rise to this appeal. The proposed revised language is intended only to clarify that one aspect of the May 3, 2006 order; it does not affect the district court's summary judgment ruling or its subsequent attorney's fees ruling.

5. Undersigned counsel for the Commonwealth appellants is advised that Mediation Program Director Joseph A. Torregrossa has discussed the parties' proposed revision with the district court judge, Juan Sanchez, and Judge Sanchez

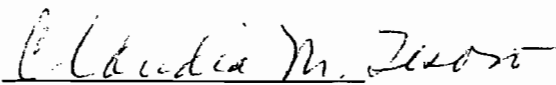
has indicated to Mr. Torregrossa that he is willing to enter a revised order in accordance with the parties' agreement, if doing so will resolve this matter.

6. Accordingly, with the express consent of appellee Stollenwerk, the Commonwealth appellants are now asking this court to enter an order, partially remanding this case, to enable the district court to enter a revised order, pursuant to the parties' agreement.

7. If and when the district court does revise its previous order, as outlined above, the parties will then submit a stipulation to dismiss this appeal in all respects.

WHEREFORE, the Commonwealth appellants, with the concurrence of the appellee, request partial remand of this appeal, so the district court can consider entering a further order in accordance with the agreement of the parties.

THOMAS W. CORBETT, JR.
ATTORNEY GENERAL

By: 
Claudia M. Tesoro
Senior Deputy Attorney General
Identification No. 32813

Office of Attorney General
21 S. 12th Street, 3rd Floor
Philadelphia, PA 19107-3603
Telephone No. (215) 560-2908
Fax: (215) 560-1031

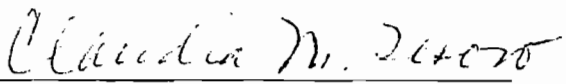
John G. Knorr, III
Chief Deputy Attorney General
Chief, Appellate Litigation Section

CERTIFICATE OF SERVICE

I, Claudia M. Tesoro, hereby certify that on January 23, 2007, I caused to be served a true and correct copy of the foregoing Uncontested Motion for Partial Remand by First Class Mail, postage prepaid, addressed to the following:

J. Dwight Yoder
Gibbel, Kraybill, & Hess
41 East Orange Street
Lancaster, Pa. 17602

THOMAS W. CORBETT, Jr.
ATTORNEY GENERAL

By: 

Claudia M. Tesoro
Senior Deputy Attorney General
Attorney I.D. No. 32813

Office of Attorney General
21 S. 12th Street, 3rd Floor
Philadelphia, Pa. 19107
Phone: (215) 560-2908
Fax: (215) 560-1031

John G. Knorr, III
Chief Deputy Attorney General

TELEPHONE
215-597-2995

Date **01/29/07**

C. of A. No 06-3285